

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	:	
	:	CIVIL ACTION NO.
Plaintiff,	:	15-CV-05370-ENV-PK
	:	
v.	:	
	:	
AZ METRO DISTRIBUTORS, LLC,	:	
	:	
Defendant.	:	
	:	
	:	

JOINT MOTION TO APPROVE CONSENT DECREE

Having engaged in comprehensive settlement negotiations and having agreed that the above-captioned action should be resolved by entry of the proposed **consent decree** attached to this motion, for the reasons state therein, Plaintiff United States Equal Employment Opportunity Commission and Defendant AZ Metro Distributors, LLC jointly move that this Court enter the attached **consent decree**.

WHEREFORE, the parties jointly request that the Court grant the motion.

Respectfully Submitted,

s/ Kirsten Peters

Kirsten Peters

Trial Attorney

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
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New York, NY 10004
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	:	
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	:	
	:	

CONSENT DECREE

Plaintiff United States Equal Employment Opportunity Commission (“EEOC”) brought this action alleging that AZ Metro Distributors, LLC (“AZ METRO”) violated the Age Discrimination in Employment Act of 1967 (“ADEA”). The EEOC alleged in its Complaint that AZ Metro violated the ADEA when it discharged Cesar Fernandez (“Fernandez”) and Archibald Roberts (“Roberts”) because of their age.

A jury trial commenced on September 19, 2019. The jury returned a verdict for the EEOC on September 24, 2019. Thereafter, the Court granted AZ METRO's motion for a new trial on damages unless the EEOC accepted a remittitur reducing the damages awarded by the jury. The EEOC declined the remittitur.

In lieu of further proceedings in this Court or on appeal, the EEOC and AZ METRO have agreed that this action should now be resolved by entry of this Consent Decree (“Consent Decree” or “Decree”), and therefore do hereby stipulate and consent to the entry of this Decree as final and binding on the parties, including AZ METRO’s predecessors (including, but not

limited to, F & V Distribution Company, LLC), successors, assigns, subsidiaries, and any other entity with which AZ METRO may merge or consolidate. The parties have agreed that this Decree may be entered into without findings of fact and conclusions of law having been made and entered by the Court.

In consideration of the mutual promises and agreements contained in this Decree, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court finds appropriate, and it is therefore ORDERED, ADJUDGED AND DECREED that:

GENERAL PROVISIONS

1. This Decree is final and binding on the parties and resolves all claims asserted by the Complaint in this action and the underlying Charge Nos. 520-2014-02382 and 520-2014-01398. This Decree does not resolve any other charge of discrimination pending before the EEOC, or any charge that may be filed in the future.

2. The parties agree and the Court finds that this Court has jurisdiction of the subject matter of this action and of the parties, that venue is proper, and that all administrative prerequisites have been met.

3. By mutual consent of the parties, this Decree may be amended in the interests of justice and fairness and to facilitate execution of this Decree's provisions. However, no waiver, modification, or amendment of any provision of this Decree will be effective unless made in writing, approved by all parties to this Decree, and approved or ordered by the Court.

4. Whenever AZ METRO is required to send documents, reports, forms, or other materials to the EEOC pursuant to this Decree, AZ METRO shall send such matters by electronic mail to "Consent Decree Monitor" at decreemonitor.nydo@eeoc.gov and kirsten.peters@eeoc.gov. Whenever the EEOC is required to send documents, information or

other materials to AZ METRO, the EEOC shall send such matters by electronic mail to AZ METRO's counsel at chris@vlmmr-law.com and mcunningham@drinkarizona.com.

INJUNCTIVE RELIEF

5. AZ METRO is enjoined from discharging employees because of their age for a period of five years from the entry of this Decree.

POLICY PROHIBITING EMPLOYMENT DISCRIMINATION

6. AZ METRO shall revise the subsection entitled "Complaint Procedure" of the AZ Metro employee handbook section entitled "Prohibition Against Harassment and Discrimination" as follows:

- a. The sentence that provides for disciplinary action in the event that the company finds an employee to be "guilty of harassing another individual," shall be amended to refer to "harassing or discriminating against another individual";
- b. The following sentence shall be deleted from the handbook: "However, if after investigating any complaint of harassment or unlawful discrimination, we determine that the complaint is not bona fide and was not made in good faith or that an employee has provided false information regarding the complaint, disciplinary action may be taken against the individual who filed the complaint or who gave the false information.";
- c. The sentence deleted from the handbook pursuant to Paragraph 6(b), above, shall be replaced by a simple statement that AZ Metro "prohibits any form of retaliation against an employee who files a complaint of harassment or discrimination or who assists in the investigation of such a

complaint”; and

d. The “Complaint Procedure” subsection of the handbook shall explicitly inform employees that they may also report harassment or discrimination directly to the EEOC.

7. AZ Metro shall provide a copy of the revised subsection of the employee handbook to the EEOC within thirty (30) days of the entry of this Decree.

8. AZ Metro shall distribute a paper copy of the revised subsection of the employee handbook to every AZ Metro employee within the Brooklyn/Queens branch within thirty (30) days of the entry of this Decree.

9. Within sixty (60) days of the entry of this Decree, AZ METRO shall post a notice describing what age discrimination is, the ADEA, the internal complaint procedure to follow if an employee believes they have been subjected to age discrimination, and EEOC contact information for use by employees to report age discrimination. This notice is to be posted for a period of two years and is to be displayed in every break room and on every bulletin board at AZ Metro’s Brooklyn/Queens branch. If there is no break room or bulletin board, Defendant must post the notice in a common area where all employees have the opportunity to view it.

REPORTING

10. Within ninety (90) days of the entry of this Decree and annually thereafter for a period of two years, AZ METRO shall report to the EEOC in writing any and all complaints of age discrimination or retaliation at AZ Metro’s Brooklyn/Queens branch that it has received during that year. Each report shall include the names of and contact information of the individuals who made each complaint, describe the nature of each complaint, and explain how each complaint was resolved.

TRAINING

11. Within sixty (60) days of the entry of this Decree, and annually thereafter for a period of two years, AZ METRO will provide all supervisory, management, and human resources personnel employees within the Brooklyn/Queens branch two (2) hours of live training on the rights and responsibilities of employees and employers under the ADEA, including a detailed description of age discrimination; the contents of AZ Metro's anti-discrimination policy, as revised; the procedure for investigating and responding to employee complaints; and the right of employees to engage in protected activity free from retaliation.

12. Within 60 days of the entry of this Decree, and annually thereafter for a period of two years, AZ METRO will provide all non-management and non-supervisory employees within the Brooklyn/Queens branch one (1) hour of live training on the rights and responsibilities of employees and employers under the ADEA, including a detailed description of age discrimination; the contents of AZ Metro's anti-discrimination policy, as revised; the procedure for investigating and responding to employee complaints; and the right of employees to engage in protected activity free from retaliation.

MONETARY RELIEF

13. AZ METRO shall make payments totaling \$300,000 ("Payments"), as set forth below, which Payments represent and include all agreed upon back pay, interest and liquidated damages for both Roberts and Fernandez.

14. Within ten (10) business days after AZ METRO receives executed W-9, W-4, and New York IT-2104 Forms signed by Roberts and the entry of this Decree, AZ METRO will issue and mail to Roberts, by Certified Mail, (i) a check for back pay and interest in the amount of \$125,000, and (ii) a check for liquidated damages in the amount of \$125,000. AZ METRO

will make all required withholdings from the portion of the Payments representing back pay and interest for applicable federal, state, and local income taxes and the employee share of federal payroll taxes. AZ METRO will be responsible for (and may not deduct from any portions of the Payments issued to Roberts) any tax obligation AZ METRO incurs as a result of these payments, including the employer's share of federal payroll taxes. AZ METRO will issue IRS Form W-2 to Roberts for the portion of the Payments representing back pay and interest, and IRS Form 1099 for the portion of the Payments representing liquidated damages. When it makes the portion of the Payments to Roberts representing back pay and interest, AZ METRO will also issue to Roberts a statement identifying the nature and amount of each withholding. AZ METRO shall contemporaneously send copies of each check and withholdings statement to the EEOC.

15. Within ninety (90) days of the entry of this Decree, AZ METRO will issue and mail checks to the address(es) provided by the EEOC, in amounts to be specified by the EEOC in its sole discretion, to next of kin or other heirs of Fernandez, as determined by the EEOC in its sole discretion. Each such portion of the Payments shall be sent by Certified Mail. If the EEOC determines that the Payments will be paid to next of kin or other heirs of Fernandez, the EEOC will provide AZ METRO with an executed W-9 Form for each such individual within sixty (60) days of the entry of this Decree. In the event the EEOC determines that it is unable to identify appropriate next of kin or other heirs of Fernandez within ninety (90) days of the entry of this Decree, the EEOC may, in its sole discretion, alternatively specify that any unallocated amounts under this Paragraph shall be paid to the United States Treasury or a nonprofit/charitable entity whose mission includes the protection of EEO rights. EEOC shall use reasonable efforts to obtain a W-9 Form for AZ METRO from the specified nonprofit/charitable entity. All payments

pursuant to this Paragraph shall not in any event total more than \$50,000

MISCELLANEOUS PROVISIONS

16 Each party shall bear its own expenses, attorneys' fees, and costs

17 No party will dispute that the Court has jurisdiction to enforce this Decree and its terms for all purposes including, but not limited to, the entering of all orders, judgments and decrees as necessary to implement the relief provided herein for the duration of this Decree

APPROVED IN FORM AND CONTENT

FOR PLAINTIFF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

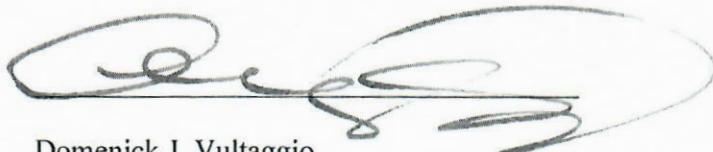
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FOR DEFENDANT AZ METRO DISTRIBUTORS, LLC



Domenick J. Vultaggio
Chairman and President of AZ Metro Distributors, LLC



Christopher P. Keenan, Esq.
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SO ORDERED, ADJUDGED AND DECREED this 1 day of October, 2021.

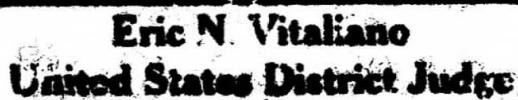
Application Granted

SO ORDERED

Brooklyn, New York

Dated: 10/1/2021

/s/ Eric N. Vitaliano



Eric N. Vitaliano
United States District Judge

The Court has reviewed the proposed consent order in this action and finds it fair, reasonable and consistent with the proof he deduced at the trial. Therefore, upon the joint application of the parties, the Court grants the joint Motion and enters the proposed consent order as the Order of the Court.